

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**DOCKET NO. 3:07-CV-00465-FDW**

**3:95-CR-00201-FDW  
3:96-CR-00098-FDW  
3:96-CR-00121-FDW  
3:96-CR-00122-FDW  
3:96-CR-00131-FDW**

<b>THOMAS DAVID DIXON, JR.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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THIS MATTER comes now before the Court upon Petitioner's Motion to Review Judgement (Doc. No. 1, Case No. 3:07-CV-00465-FDW). In his motion, Petitioner requests that the Court review his sentence in light of United States v. Booker and the now advisory nature of the United States Sentencing Guidelines. As an initial matter, the Court notes that Petitioner's Motion is in actuality a motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Thus, the Court will construe it as such and has instructed the Clerk to open a new civil case. For the reasons stated below, Petitioner's Motion is DENIED.

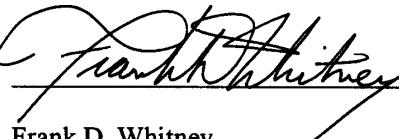
Petitioner is, of course, correct that under the Supreme Court's holding in United States v. Booker, 543 U.S. 220 (2005), the United States Sentencing Guidelines are no longer mandatory, but are rather advisory. Petitioner is incorrect, however, in thinking that he may now, more than ten years after his sentencing, collaterally attack his sentence under Booker. The United States Court

of Appeals for the Fourth Circuit has clearly held that Booker “does not apply retroactively to cases on collateral review.” United States v. Morris, 429 F.3d 65, 66 (4th Cir. 2005). As a result, Booker “is not available for post-conviction relief for federal prisoners . . . whose convictions became final before Booker (or Blakely) was decided.” Id. at 72. Thus, Petitioner’s reliance on Booker in support of his § 2255 motion is misplaced.

As stated above, United States v. Booker cannot be used to collaterally attack a sentence in a § 2255 motion. Therefore, Petitioner’s Motion is DENIED.

IT IS SO ORDERED.

Signed: October 30, 2007



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Frank D. Whitney  
United States District Judge

